

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
.....

JOSE CALVENTE,

Plaintiff

-against-

SUFFOLK COUNTY CORRECTIONAL
FACILITY

Defendants
.....

PLAINTIFF'S PROPOSED
PRETRAIL ORDER

CV15-2024
(JFB)(ARL)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JAN 12 2017 ★
LONG ISLAND OFFICE

The undersigned, Jose Calvente, submits the following proposal pursuant to Rule 26 of the Federal Rules of Civil Procedure:

JURISDICTION

This Court has jurisdiction pursuant to 42 U.S.C. § 1983. It also has supplementary jurisdiction under 28 U.S.C. § 1331.

PLAINTIFF'S CLAIMS

Plaintiff alleges that he was deprived of his right to adequate medical care pursuant to U.S. Const. Amend. VIII. Also, that Defendants were deliberately indifferent to his medical needs.

DEFENDANT'S CLAIM

Defendant claims the following:

- a) Plaintiff was not deprived of his right to adequate

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medical care; and

b) Plaintiff did not sustain the injuries and damages claimed.

PLAINTIFF'S STIPULATION OF FACTS

Plaintiff offers the following:

a) The undersigned was incarcerated at Suffolk Correctional Facility during the cause of action;

b) He was, at the age of sixty-five (65), placed in a top bunk;

c) Plaintiff had numerous pre-existing medical issue of which the staff was fully aware;

d) That on the 4th day of March 2014, Plaintiff fell off the top bunk;

e) Upon falling off the top bunk Plaintiff obtained a laceration to his scalp;

f) That Plaintiff notified the housing unit Officer and also informed officer of pre-existing medical issues;

g) Plaintiff received treatment and staples for laceration at Peconic Bay Medical Center;

h) Plaintiff was eventually discharged from Medical Center and instructed to have staples removed within ten (10) days. Also to return if any signs showed of infection or he experienced dizziness; and

i) That upon return, Plaintiff was required to continue sleeping in top bunk by Housing Unit Officer and Medical Staff.

ISSUES OF FACT FOR LITIGATION

Plaintiff presents the following issues of fact to be decided by a jury:

- a) Whether the Defendants showed Deliberate Indifference in failing to place Plaintiff in a bottom bunk after sustaining injury;
- b) Whether the laceration which required staples resulted from Plaintiff's fall from the top bunk; and
- c) Whether the injuries sustained by Plaintiff was serious.

ISSUES OF LAW TO BE LITIGATED

Plaintiff offers the following issues of law for litigation:

- a) That Defendant's violated Plaintiff right to be free from cruel and unusual punishment pursuant to U.S. Const. Amend. VIII;
- b) Whether Defendants' failure to place plaintiff in a bottom bunk despite being aware constituted Official Misconduct pursuant New York Penal Law § 195.00; and
- c) Plaintiff has established deliberate indifference to Plaintiff's Medical Need as set forth in Estelle v. Gamble, 4492 U.S. 97 (1976).

EVIDENCE

The undersigned wholly intends to present the following as evidence:

- a) Suffolk County Correctional Facility medical records for Jose Calvente;
- b) New York State department of Corrections and

Community Supervision medical records for Jose Calvente;

c) Peconic Bay Medical Center's discharge instructions for Jose Calvente;

d) Medication prescribed to Plaintiff, Jose Calvente;

e) Optometry Center referrals for Jose Calvente;

f) Suffolk County Department of Health Services suture removal records for Plaintiff, Jose Calvente;

g) Dr. Alice Butkos's generated assessment plan for Jose Calvente; and

h) Plaintiff, Jose Calvente's Peconic Bay Medical center head injury report'

WITNESSES

Jose Calvente seeks to call the following witnesses;

a) Dr. James L. Tomarken, Department of Health Services;

b) Wieslawa Stelzel;

c) Patricia Buerkle;

d) David Lawrence;

e) Devin Calandra, Facility Medical Department;

f) Dr. J. Micalizzi, MD, Radiologist; and

g) Alice Butkos, Site Medical Provider.

PROSPECTIVE EVIDENCE PROBLEMS

Plaintiff seeks to preserve the right to submit possible Motions in limine.

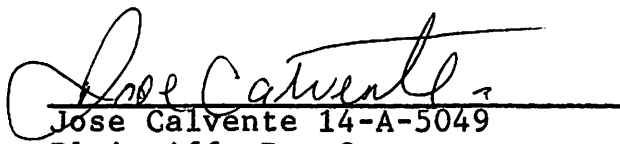
TRIAL TYPE

Jury trial is sought.

SETTLEMENT

The Plaintiff, Jose Calvente, proceeding Pro Se is presently willing to consider the possibility of a reasonable settlement offer made by the Defendants at this time, and is prepared for this Court to schedule a settlement conference.

Dated: 1 / 8 / 17
Marcy, New York


Jose Calvente 14-A-5049
Plaintiff, Pro Se
Marcy Correctional Facility
9000 Old River Road
Post Office Box 3600
Marcy, New York 13403-3600

To: United State District Court
Eastern District of New York
Attn: Clerk of the Court
Long Island Federal Courthouse
Central Islip, New York 11722-4438

Suffolk County Attorney's Office
Attn: Arlene S. Zwillling, Esq.
Attorney for Defendant
Post Office Box 6100
100 Veterans Memorial Highway
Hauppauge, New York 11788-0099

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS.:
COUNTY OF ONEIDA)


JOSE CALVENTE, being duly sworn, hereby deposes and says:

That on this 8 day of JANUARY, 20 17, I served the within _____
PLAINTIFF'S PROPOSED PRETRAIL ORDER.

upon the individual(s) listed below, by placing true and exact copies of the same in properly addressed envelopes and depositing the same into the mail receptacle at the Marcy Correctional Facility to be mailed via the United States Postal Service to said party/parties listed below:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
ATT: CLERK OF THE COURT
LONG ISLAND FEDERAL COURTHOUSE
CENTRAL ISLIP, NEW YORK. 11722-4438

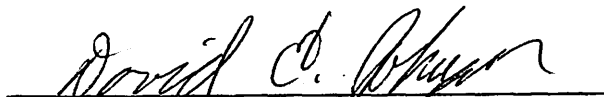
SUFFOLK COUNTY ATTORNEY'S OFFICE
ATT: ARLENE S. ZWILLING, ESQ
ATTORNEY FOR DEFENDANT
P.O. BOX 6100
100 VETERANS MEMORIAL HIGHWAY
HAUPPAUGE, NEW YORK. 11788-0099


Deponent

JOSE CALVENTE # 14A5049

Sworn to before me

this 8 day of JANUARY, 20 17


Notary Public of State of New York

DAVID E. JOHNSON
Notary Public in the State of New York
Qualified in Oneida County 01JO6295737
My Commission Expires Jan. 6, 2018

